163 U S 677

RECORD, CASE No. 15,066.

163-677

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~1096~~. 763 443 127

CHARLES M. BASSETT, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JUNE 27, 1892.

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1 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

To the State of Minnesota, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the eighteenth day of July, A. D. 1892, pursuant to a writ of error filed in the clerk's office of the supreme court of Minnesota, wherein Charles M. Bassett is plaintiff in error and the State of Minnesota is defendant in error, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. James Gilfillan, chief justice of the supreme court of Minnesota, this eighteenth day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Seal of the Supreme Court, State of Minnesota.

JAMES GILFILLAN,
Chief Justice Supreme Court of Minnesota.

2 [Endorsed:] 7602. Supreme Court of the United States. Charles M. Bassett *vs.* The State of Minnesota. Citation to October term, A. D. 1892. Service of the within citation by copy thereof is hereby admitted this 18th day of June, 1892. Moses E. Clapp, att'y general of the State of Minnesota. Filed June 18th, 1892. C. P. Holcomb, clerk.

3 THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

To the judges of the supreme court of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said supreme court, between Charles M. Bassett, appellant, and The State of Minnesota, respondent, in an action of criminal complaint, a manifest error hath happened, to the great damage of the said Charles M. Bassett, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the eighteenth day of July, A. D. 1892, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this eighteenth day of June, in the year of our Lord one thousand eight hundred and ninety-two, and on the Independence of the United States the one hundred and sixteenth year.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

OSCAR B. HILLIS,
Clerk U. S. Circuit Court, Dist. Minn.

4 [Endorsed:] 7602. State of Minnesota supreme court. Writ of error. Filed June 18th, 1892. C. P. Holcomb, clerk.

5 *Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of Minnesota.*

To the Honorable James Gilfillan, chief justice of the supreme court of Minnesota:

And now comes Charles M. Bassett, by his attorney, and represents that in a certain cause wherein this petitioner was appellant and the State of Minnesota was respondent, lately pending in the supreme court of Minnesota, being the highest court of the State of Minnesota in which a decision in said cause could be had, there was drawn in question the validity of a statute of said State on the ground that said statute was repugnant to the Constitution of the United States, more especially to the fourteenth amendment and to section eight of article one of said Constitution, and the decision was against this petitioner and in favor of the validity of said statute; and petitioner avers that in said decision and in the record and proceedings in said cause and in the final judgment therein against this petitioner, rendered on the 18th day of June, 1892, there are manifest errors, to the injury of this petitioner, as will fully appear from an inspection of said record in said supreme court of Minnesota remaining.

Wherefore this petitioner prays that a writ of error may be issued, to the end that said record, proceedings, and judgment may be inspected and reviewed and the errors aforesaid corrected by the Supreme Court of the United States.

CHARLES M. BASSETT,
By JOHN M. OLIVER,
His Attorney.

6 Let the writ of error issue as prayed in the foregoing petition.

JAMES GILFILLAN,
Chief Justice of the Supreme Court of Minnesota.

Endorsed: 7602. State of Minnesota supreme court. Petition. Filed June 18th, 1892. C. P. Holcomb, clerk.

7 UNITED STATES OF AMERICA:

Supreme Court of the United States, October Term, A. D. 1892.

CHARLES M. BASSETT, Plaintiff in Error,
vs.
STATE OF MINNESOTA, Defendant in Error. } Error to the Supreme Court of Minnesota.

Assignment of Errors.

And now comes Charles M. Bassett, plaintiff in error, in his own person and by his attorney, and complains and says that the supreme court of Minnesota is the highest court in said State in which a decision of the suit shown in said record, being a suit wherein the plaintiff in error was appellant and the State of Minnesota was respondent, could be had; that in said suit there is drawn in question the validity of a statute of the State of Minnesota, approved April 20, 1891, entitled "An act in relation to the manufacture and sale of lard and of lard compounds and substitutes, and of foods prepared therefrom; to prevent fraud and to preserve the public health," being chapter 12 of the General Laws of Minnesota, enacted in 1891, on the ground that said statute is repugnant to the Constitution of the United States, more particularly to the first section of the fourteenth amendment and the commercial clause of the eighth section of the first article of said Constitution; that the decision of said supreme court was against this plaintiff in error and in favor
8 of the validity of said statute, and that in said decision, as appears in said record and proceedings and in the final judgment of said supreme court, there is material and manifest error as against the rights of this plaintiff in error. Wherefore he prays that the said judgment and decision of the supreme court of Minnesota may be set aside, reversed, and held for naught, and for the appropriate judgment, order, and direction of this court in that behalf.

And for more specific assignment of errors plaintiff in error says:

1. Said supreme court of Minnesota erred in holding that said statute, and more particularly the sixth section thereof, was valid as being within the police power of the legislature "to prevent fraud and preserve the public health," and, being so valid as a police law, did therefore displace and limit the first section of the fourteenth amendment to the Constitution of the United States, so far as said constitutional provision might otherwise have secured to this plaintiff in error the right to trade in or deal with the food product, cottolene, free from any conditions, restrictions, or penalties as are imposed by said statute.

2. Said supreme court of Minnesota erred in holding that said statute was not repugnant to the first section of the fourteenth amendment to the Constitution of the United States.

3. Said supreme court of Minnesota erred in holding that said statute was not repugnant to the eighth section of the first article of the Constitution of the United States providing that "The Con-

gress shall have power to regulate commerce among the several States," etc.

4. The supreme court of Minnesota erred in holding that a food product which does not menace or imperil the public health and which is not made use of and is not appropriate for purposes of fraud is yet subject to the police power of the legislature "to prevent fraud and preserve the public health."

5. Said supreme court of Minnesota erred in affirming the judgment of the municipal court of Minneapolis imposing a fine of twenty-five dollars on this plaintiff in error, and in default of payment thereof an imprisonment for thirty days in the workhouse, for the alleged violation of the statute aforesaid, which statute is in violation of the first section of the fourteenth amendment to the Constitution of the United States, to wit: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

6. Said supreme court of Minnesota erred in affirming the judgment of the said municipal court overruling the motion of defendant (Bassett) therein for a new trial, which motion should have been sustained.

7. Said supreme court of Minnesota erred in affirming the rulings of said municipal court excluding the following offers of proof: "The defendant offers to prove by James Boyce, practical chemist, that he is in the employ of N. K. Fairbank & Co., of Chicago, Illinois, as a chemist; that he has been employed in the laboratory of said firm for the last five years, first as assistant chemist, and for the last two years has been chemist-in-chief; that he makes analysis of all samples of cotton-seed oil and beef stearine that are used in the manufacture of cottolene; that no materials are used except those of good quality; that no cooking fat containing no lard is on the market as a lard substitute except the cottolene made by N. K. Fairbank & Co.; that the beef stearine, which is a component part of said cottolene, is the choice, selected fat from healthy beef cattle, after subjecting said fat to pressure and pressing a natural oil therefrom; that said stearine is a wholesome, edible animal fat; that the cotton-seed oil, which is the remaining component part of said cottolene, is a pure, refined cotton-seed oil, made only from prime crude cotton-seed oil, and that said refined cotton-seed oil is a bland, neutral vegetable oil, edible and palatable and highly useful as an article of food, as well when used by itself as when blended with other fats; that it blends perfectly with animal stearines, and in such blend makes an entirely wholesome, easily-digested, and nutritious food, free from all deleterious elements; that cottolene so made, and being the only brand on the market, is a wholesome, palatable, nutritious food, agreeing well with persons of delicate digestion and of dyspeptic tendency, and in that respect is superior to lard; that said cottolene does not resemble lard in appearance, is not and never has been sold as lard, and is less liable than lard to turn rancid with long keeping; that, pound for pound,

on its chemical constituents it is fully as nutritious as lard; that said cottolene is made of uniform quality and composition and was so made at and prior to April 20th, 1891.

"Defendant further offers to prove by said witness that
11 on and prior to April 20th, 1891, there were no cooking fats in the market consisting of any mixture or compound of lard with animal or vegetable oils or fats sold as a substitute for lard or having the semblance of lard other than the cooking fat made by N. K. Fairbank & Co., of Chicago, Illinois, and by some other firms, and composed of lard, lard stearine, beef stearine, and refined cotton-seed oil, and known as 'lard compound;' that said compound then and there consisted and does consist of said ingredients in varying proportions, but that said lard, lard stearine, and beef stearine are all wholesome, edible fats; that the qualities of the cotton-seed oil used therein are as aforesaid, and that said lard compounds are and were fully as nutritive, pound for pound, as pure lard and fully as wholesome, and that the commercial 'lard compound' then and now made consisted and consists of said ingredients carefully selected and skillfully blended and is more pleasing to the average taste than pure lard.

"The State objected to evidence of the character set forth in said offer and every part thereof as incompetent, irrelevant, and having no bearing on the case. Defendant's counsel thereupon stated that the object of said offer is to prove by Prof. Boyce:

"First. That no cottolene is or has been made in the State of Minnesota; and this in support of the proposition, which defendant maintains, that the Minnesota statute on which this action is based is in violation of the commercial clause of section 8 of article I of the Constitution of the United States, empowering Congress to regulate commerce with foreign nations and among the several States.

12 "Second. Facts showing that said statute is an unwarranted interference with the rights of property and the right and liberty of the citizen to exercise an honest and harmless calling; and these in support of the further proposition, which defendant maintains, that said statute is in violation of the 14th amendment to the Constitution of the United States."

8. The said supreme court of Minnesota erred in sustaining the rulings of the said municipal court in excluding offers of proof, as shown in the bill of exceptions or statement of case contained in said record.

Wherefore and for other manifest and material errors in said record this plaintiff in error prays that the said judgment and final order of said supreme court of Minnesota may be reversed, set aside, and held for naught, with such order and direction from this court as may be lawful in this behalf.

CHARLES M. BASSETT,
By JOHN M. OLIVER,
His Attorney.

Endorsed: 7602. Supreme Court of United States. Charles M. Bassett, plaintiff in error, *v.* State of Minnesota, defendant in error. Assignment of errors. Filed June 18th, 1892. C. P. Holcomb, clerk.

13 Know all men by these presents that we, Charles M. Bassett, of Minneapolis, Minnesota, and Charles M. Hertig, of Minneapolis, Minnesota, are held and firmly bound unto the State of Minnesota in the full sum of one thousand dollars, to be paid to the said State of Minnesota, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighteenth day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a term of the supreme court of the State of Minnesota and on the 18th day of June, 1892, in a suit depending in said court between Charles M. Bassett, as appellant, and said State of Minnesota, as respondent, a final judgment was rendered against said Charles M. Bassett, and the said Charles M. Bassett having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said State of Minnesota, citing and admonishing it to be and appear at a Supreme Court of the United States holden at Washington, D. C., on the eighteenth day of July, A. D. 1892:

14 Now, the condition of the above obligation is such that if the said Charles M. Bassett shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES M. BASSETT. [SEAL.]
CHARLES M. HERTIG. [SEAL.]

Approved by—
JAMES GILFILLAN,
Chief Justice of the Supreme Court of Minnesota.

The above and foregoing bond is satisfactory to the State of Minnesota in form, amount, sufficiency of surety, and evidence of execution.

J. F. McGEE,
Special Counsel for Respondent.

Endorsed: 7602. State of Minnesota supreme court. Bond. Filed June 18th, 1892. C. P. Holcomb, clerk.

15 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Municipal Court, City of Minneapolis.

STATE OF MINNESOTA, Plaintiff, }
vs.
CHARLES M. BASSETT, Defendant. }

Complaint.

Andrew Dickey, being duly sworn, makes complaint to the above-named court, and says that on the 11th day of January, A. D. 1892, at the city of Minneapolis, in said county of Hennepin and State of Minnesota, Charles M. Bassett, a baker then and there being, did, willfully, unlawfully, and wrongfully, sell to affiant certain articles of food, to wit, six (6) cakes commonly called doughnuts, which said doughnuts had then and there been prepared in part with a lard substitute, to wit, that certain substance then and there known as and called "cottolene," consisting of a mixture of beef stear-
16 ine and refined cotton-seed oil; that said Charles M. Bassett, baker as aforesaid, did not then and there at the time of said sale furnish to the purchaser, to wit, this affiant, a card upon which was distinctly and legibly printed the words "This food is prepared with lard substitute."

Which said sale then and there made as aforesaid was contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota. Wherefore complainant prays that said offender may be arrested and dealt with according to law.

ANDREW DICKEY.

Sworn to and subscribed and complained of before me this 12th day of January, A. D. 1892.

[MUNICIPAL COURT SEAL.] A. E. ALLEN,
Deputy Clerk of the Municipal Court.

Filed Jan'y 12, 1892.

H. J. ALTNOW, *Clerk,*
By A. E. ALLEN, *Deputy.*

Upon said complaint there was issued for the defendant a warrant in regular form, omitted here for the sake of brevity. The defendant was arrested on said warrant on the 13th of January, 1892, brought before said court and arraigned, and did then and there plead not guilty, and waived a trial by jury.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Municipal Court, City of Minneapolis.

(Title of Cause.)

Statement of Case.

The issues herein came on for trial before Hon. Stephen Mahony, a judge of said court, at a regular term thereof, on the 20 day of January, 1892.

The State appeared by L. A. Dunn, Esq., assistant city at-
17 torney for said city, and by A. P. Abell, Esq., special counsel; the defendant appeared in person and by C. M. Hertig, Esq., his attorney.

To maintain the issues upon the part of the State ANDREW DICKEY, prosecuting witness, was sworn and testified as follows: I know defendant; called at defendant's store, No. 1009 Nicollet avenue, in Minneapolis, Hennepin county, Minnesota, on the 11th day of January, 1892; asked defendant if he had some doughnuts, and he said he had. I told defendant that I wanted some, and defendant put them in a sack, a half dozen, and while defendant was putting them in the sack I asked him what he used in making them, whether lard or lard compound, and defendant said he used cottolene.

Cross-examination:

I bought and paid for said doughnuts.

Redirect examination:

Defendant did not give me a printed card or paper containing or stating that the doughnuts in question were prepared with a lard substitute.

The State rested.

For the defence CHARLES M. BASSETT, defendant, was called and sworn in his own behalf and testified as follows: I reside in Minneapolis; have resided there about eight years; have a bakery and do a retail trade in selling there bread, pies, cakes, etc.

The defense further offered to prove by the witness "that some months ago he commenced to use cottolene in his business as a cooking fat; that he found it to be satisfactory in every way, nutritive, wholesome, palatable, satisfactory to his customers, and going as far or farther, pound for pound, as lard; and, further, that the restriction imposed by section 6 of chapter 12 of the Statutes of
18 1891 is burdensome and restrictive of trade and of the proper use, in his judgment as a baker, of the cooking fat best suited, according to his opinion and experience, to please his customers." (To this evidence the State objected. The court sustained the objection, and the defendant took an exception.)

Recross-examination:

I used cottolene entirely as a substitute for lard in making these cakes.

The State here made formal admission that the substance called cottolene is of a slightly yellowish color as compared with pure lard and can be distinguished from lard by its color.

The defense then called as a witness KNUT ASLESON, who was sworn as a witness, and the defense offered to prove by him that cottolene is and has been heretofore manufactured by N. K. Fairbank & Co., of Chicago, Illinois; that it is sold to the trade in tubs and in small tin pails, holding either three or five pounds, said tin pails being intended to be sold to the consumers without breaking bulk in the same; that said tubs and tin pails are and were, at and prior to April 20th, 1891, each labeled, respectively, with a label purporting to be a trade-mark label, containing in the center, as the distinctive sign thereof, the figure of an ox looking through growing cotton, and bearing about said figure in prominent letters the legend "Golden cottolene. Product of the American Cotton-Oil Company, N. K. Fairbank & Co., St. Louis, Chicago, New York;" that the label on said tubs is of an oval shape, about a foot in diameter, and of corresponding size on the small tin pails.

The defence also offered in evidence, along with the offer of proof of said witness, a fac-simile of said label as used on said tubs and other vessels. To the introduction in evidence of the facts so offered to be proved by said witness and to each of them and to the
19 introduction of said fac-simile of said label the State objected.

Defendant's counsel thereupon stated that the object of said offer is to prove—

1. That no cottolene is or has been made in the State of Minnesota; and this in support of the proposition, which defendant maintains, that the Minnesota statute on which this action is based is in violation of section eight of article one of the Constitution of the United States, the commercial clause empowering Congress to regulate commerce with foreign nations and among the several States.

2. Facts showing that said statute is an unwarranted interference with rights of property and the right and liberty of the citizen to exercise an honest and harmless calling; and this in support of the further propositions, which the defendant maintains, that said statute is in violation of the 14th amendment to the Constitution of the United States and is in violation also of article one of the constitution of Minnesota, known as the bill of rights, and especially of section 2 of said article 1.

The court, after hearing arguments of counsel, sustained the objection to said offers and every part thereof; to which ruling the defendant excepted. Said fac-simile is hereto annexed as "Exhibit A."

The defendant, to further maintain the issues in his behalf, called as a witness JAMES BOYCE, who was duly sworn and testified as fol-

lows: I reside in Chicago, Illinois; am a chemist by occupation and profession, and am in the employ of N. K. Fairbank & Co., of Chicago, Illinois, the firm mentioned by Mr. Aslesen.

Upon the suggestion of saving time by making formal offer of proof the defence made the following formal offer: "The defendant offers to prove by James Boyce, practical chemist in the employ of N. K. Fairbank & Co., of Chicago, Illinois, that he has
20 worked for said firm for more than seven years last past; that he has been employed in the laboratory of said firm for the last five years—first as assistant chemist, and for the last two years has been chemist-in-chief; that he makes analysis of all samples of cotton-seed oil and beef stearine that are used in the manufacture of cottolene; that no materials are used except those of good quality; that no cooking fat containing no lard is on the market as a lard substitute except the cottolene made by N. K. Fairbank & Co.; that the beef stearine, which is a component part of said cottolene, is the choice, selected fat from healthy beef cattle after subjecting said fat to pressure and pressing a natural oil therefrom; that said stearine is a wholesome, edible animal fat; that the cotton-seed oil, which is the remaining component part of said cottolene, is a pure, refined cotton-seed oil, made only from prime, crude cotton-seed oil, and that said refined cotton-seed oil is a bland, neutral vegetable oil, edible and palatable, and highly useful as an article of food as well when used by itself as when blended with other fats; that it blends perfectly with animal stearines, and in such blend makes an entirely wholesome, easily digested, and nutritious food, free from all deleterious elements; that cottolene so made, and being the only brand on the market, is a wholesome, palatable, nutritious food, agreeing well with persons of delicate digestion and of dyspeptic tendency, and in that respect is superior to lard; that said cottolene does not resemble lard in appearance, is not and never has been sold as lard, and is less liable than lard to turn rancid with long keeping; that, pound for pound on its chemical constituents, it is fully as nutritious as lard; that said cottolene is made of uniform quality and composition, and was so made at and prior to April 20th, 1891.

21 "Defendant further offers to prove by said witness that on and prior to April 20th, 1891, there were no cooking fats in the market consisting of any mixture or compound of lard with animal or vegetable oils or fats sold as a substitute for lard, or having the semblance of lard, other than the cooking fat made by N. K. Fairbank & Co., of Chicago, Illinois, and by some other firms, and composed of lard, lard stearine, beef stearine, and refined cotton-seed oil, and known as "lard compound;" that said compound then and there consisted and does consist of said ingredients in varying proportions, but that said lard, lard stearine, and beef stearine are all wholesome, edible fats; that the qualities of the cotton-seed oil used therein are as aforesaid, and that said lard compounds are and were fully as nutritive, pound for pound, as pure lard, and fully as wholesome, and that the commercial "lard

compound" then and now made consisted and consists of said ingredients carefully selected and skillfully blended, and is more pleasing to the average taste than pure lard." The State objected to evidence of the character set forth in said offer and every part thereof as incompetent, irrelevant, and having no bearing upon the case. Defendant's counsel thereupon stated that the offer was made for the same reasons that the foregoing offer of proof by the witness Aslesen was made, and in support of the same propositions as to the unconstitutionality of the Minnesota statute under which this action was brought. The court sustained the objection to the offer and to each part thereof, and the defence excepted.

Mr. Boyce further testified: Cottolene is made of beef stearine and refined cotton-seed oil.

Cross-examination.

The proportion is 20 to 25 per cent. of beef stearine and 75 to 80 per cent. of cotton-seed oil.

22 Redirect examination:

Beef stearine is the selected fat of beef cattle—that is, it is the fat subjected to pressure, whereby the oil is expressed and the stearine left. The stearine is what is used. It is a part of the beef fat. It is the stearine of the fat, whether it is beef fat or lard, which produces the shortening in pie crust. Pure lard is, as a general thing, too soft to make good pie crust, and makers of lard add stearine just to get that desired effect. It is a combination of oil and stearine that gives the requisite result in pastry.

Recross-examination:

Am not a cook, but have had the experience of eating different articles cooked with this substance. Pure lard has from 40 to 60 per cent. of stearine. Stearine is a component part of all animal fat.

The defendant further produced as a witness R. O. BEARD, M. D., who was sworn, and testified as follows:

I reside in Minneapolis; am by occupation a physician; am professor of physiology in the medical department of the College of Medicine, in this city.

The court asked counsel for defence if the offer of proof by this witness will be the same as before; whereupon Mr. Hertig —: "My offer will be in brief to prove by this witness that cotton-seed oil is a wholesome, nutritive, vegetable oil which delicate stomachs bear without injury, and in that respect it is superior to lard; that it is wholesome and nutritive as aforesaid either when used by itself alone as cotton-seed oil simply and also when blended with animal fats. That is what I propose to prove by the Doctor in further behalf of said unconstitutionality."

Mr. ABELL: The same objection as to the former offer.

The COURT: I will sustain the objection.
Mr. HERTIG: I take an exception.

23 Mrs. J. W. JOHNSON was also sworn as a witness on behalf of the defendant and testified as follows:

I reside in Minneapolis.

Mr. Hertig made the following offer of proof: "I expect to prove by this witness that for some months she has used cottolene in her own kitchen as a housekeeper; that she finds it a wholesome and palatable cooking fat; that it will go further in practical use, pound for pound, than lard, and that as compared with lard she likes it better as a cooking fat."

Mr. ABELL: "The same objection—incompetent, irrelevant, immaterial, and inadmissable, as it has no bearing on the case."

The COURT: "Objection sustained."

M.. HERTIG: "I take an exception; reasons for offer as before."

Mr. A. P. TEEL was sworn as a witness on behalf of the defense and testified as follows: I reside in Minneapolis; have so resided for seven years; am salesman for N. K. Fairbank & Co., selling "lard compound" and "cottolene;" that N. K. Fairbank & Co., of Chicago, are the manufacturers of cottolene.

Q. "What can you say about cottolene, as to its quality as a food?"

Mr. ABELL: "That is objected to on the same ground."

Mr. HERTIG: "I offer to prove by this witness that cottolene is a wholesome edible fat somewhat more nutritive, pound for pound, than lard, wholesome and palatable; that it is not sold as lard and was not sold as lard on and prior to the 20th day of April, 1891, but has been and is always sold on its own merits; that at and prior to the 20th day of April, 1891, there were not cooking fats on the market, besides the ordinary brands of commercial lard, other than cottolene and a cooking fat composed of lard, lard stearine, beef stearine, and cotton-seed oil and sold under the name of
24 'lard compound;' that said lard compound was and is a wholesome and palatable edible fat and fully as nutritive, pound for pound, as pure lard. That is my offer to prove by this witness. It is in support of the second branch of the reasons for making the Aslesen offer."

Mr. DUNN: That is objected to as incompetent, irrelevant, and as having no bearing on the case:

Objection sustained. Exception by defendant.

Cross-examination:

Am the agent of N. K. Fairbank & Co.; know what cottolene is; it is used for shortening and frying purposes; takes the place of lard.

EXHIBIT "A."

Charles M. Bassett
vs.
The State of Minnesota } No. 96. p. 96.

Redirect examination:

Cottolene is used as an edible cooking fat in all culinary operations for which lard is used.

The defense then offered in evidence two registered trade-marks belonging to said N. K. Fairbank & Co., numbered, respectively, 14808 and 16201, each evidenced by the certificate of the Commissioner of Patents of the United States, dated, respectively, October 11, 1887, and January 22, 1889, and giving to said N. K. Fairbank & Co. respectively a trade-mark proprietorship in the name cottolene, and a trade-mark on the particular label, as above described, in the testimony of Mr. Aslesen, on page 2 hereof, lines 28 to 31, and page 3 hereof, lines 1 to 6 (folios 15–16 hereof). The State objected to the introduction of the trade-marks as incompetent, irrelevant, and immaterial. Defendant's counsel stated that the offer was made in support of the same propositions as to unconstitutionality as were advanced by the defense in making the foregoing offer of proof by the witnesses Aslesen and Boyce.

The case was thereupon declared closed as to the introduc-
25 tion of testimony, and the court, by consent of counsel for the State and defendant, set the case for argument on the 25th day of January, 1892.

On January 25th, 1892, the case was argued by counsel for the parties, who were the same on such argument as aforesaid, except that J. F. McGee, Esq., also appeared as special counsel for the State.

The court, after hearing the arguments of counsel, found:

1. That the statute under which this action is brought, to wit, section 6 of chapter 12 of General Laws of 1891, is not in violation of the commercial clause of section 8 of article 1 of the Constitution of the United States, and that no part of said chapter 12 bearing upon this action is in violation of said commercial clause.

2. That neither said section 6 of said chapter 12 nor any part of said chapter applying to this action is in violation of the 14th amendment to the Constitution of the United States.

3. That neither said section 6 nor any part of said chapter 12 applying to this action is in violation of the constitution of Minnesota.

4. That the defendant is guilty as charged in the complaint.

And thereupon the court ordered and adjudged that the defendant pay a fine of twenty-five dollars, and in default of such payment that he be imprisoned in the work-house for a period of thirty days.

(Here follows diagram marked p. 26.)

27 STATE OF MINNESOTA, }
County of Hennepin. }

In Municipal Court, City of Minneapolis.

(Title of Cause.)

Stipulation.

It is hereby stipulated by and between the undersigned attorneys for the above-named parties that the annexed and foregoing statement of case is in every respect true; that the same contains all the evidence adduced on the trial of said action and the rulings and exceptions made in relation thereto, and in every respect is a true, full, and complete record of the proceedings had in the trial of said action.

It is further stipulated and agreed that the Hon. Stephen Mahoney, the judge of the above-entitled court, before whom said action was tried, may settle and allow the foregoing statement of case as the statement of case in said action without notice to the undersigned attorneys for the plaintiff, such notice being hereby expressly waived.

It is further stipulated and agreed that the motion for a new trial in said action may be made forthwith or at any time that defendant may choose, not later than February 24, 1892.

Dated February 23, 1892.

L. A. DUNN,
Ass't City Attorney.
ACE P. ABELL,
J. F. McGEE,
Attorneys for Plaintiff.
C. M. HERTIG,
Attorney for Defendant.

28 STATE OF MINNESOTA, }
County of Hennepin, } *ss:*

In Municipal Court, City of Minneapolis.

(Title of Cause.)

Order Settling Statement of Case.

The foregoing statement of case contains all the evidence given upon the trial. And it appearing to me that said statement of case is conformable to the truth, fully sets forth the evidence and the rulings and exceptions made in relation thereto, and is a full and complete record of the proceedings had in the trial of said action, I have hereby duly settled and signed the same, and order it to be filed and annexed to the judgment-roll.

STEPHEN MAHONEY,
Municipal Judge.

Feb'y 24, 1892.

C. J. ALTNOW, *Clerk.*
By O. J. SMITH, *Deputy.*

STATE OF MINNESOTA, } ss:
County of Hennepin, }

In Municipal Court, City of Minneapolis.

(Title of Cause.)

Stipulation.

It is hereby stipulated by and between the parties in the above-entitled action that the defendant, with consent of said court, may have until February 18th, 1892, for the making up and settling of statement of the case and for serving notice of a motion of new trial.

Dated this 25th day of January, 1892.

L. A. DUNN,
Ass't City Attorney.
ACE P. ABELL,
J. F. McGEE,
Attorneys for Plaintiff.
C. M. HERTIG,
Attorney for Defendant.

Filed Feb'y 4, 1892.

H. J. ALTNOW, *Clerk,*
By O. J. SMITH, *Deputy.*

29 A second stipulation in the same form as the above, and dated February 18th, 1892, and signed as above, extends the time for the making up and settling of statement of the case and for serving notice of motion for new trial until February 25th, 1892.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Municipal Court, City of Minneapolis.

(Title of Cause.)

Notice of Motion for New Trial.

Please take notice that upon the pleadings and the case herein as stipulated by counsel and settled by the court the undersigned will move this court forthwith, to wit, on the 23rd day of February, 1892, at 12 m., or as soon thereafter as counsel can be heard, at the criminal court room of said court, in Minneapolis, in said county, for a new trial, upon the following grounds, to wit:

1. The judgment of the court is not justified by the evidence and is contrary to law.

2. Errors in law occur-ing at the trial and excepted to by the defendant.

3. The statute under which defendant was convicted, to wit, section 6 of chapter 12 of the General Laws of 1891, is unconstitutional; is in violation of section 2 of article 1 of the constitution of Minnesota and of the 14th amendment to the Constitution of the United

States, and is also in violation of section 8 of article 1 of the Federal Constitution, empowering Congress to regulate commerce between the States.

4. Section 6 of chapter 12 of the General Laws of 1891 is in violation of section 27 of article 4 of the constitution of Minnesota.

Dated at Minneapolis, Minn., February 23rd, 1892.

C. M. HERTIG,
Defendant's Attorney.

To R. D. Russell, Esq., city attorney, and to Ace P. Abell and J. F. McGee, special counsel for plaintiff.

Due and sufficient service of the within notice is admitted this 23rd day of February, 1892.

R. D. RUSSELL,
City Attorney.
ACE P. ABELL,
J. F. McGEE,
Attorneys for Plaintiff.

Filed Feb'y 24, 1892.

H. J. ALTNOW, *Clerk,*
By O. J. SMITH, *Deputy.*

STATE OF MINNESOTA, *County of Hennepin,* } ss:

In Municipal Court, City of Minneapolis.

(Title of Cause.)

This cause having come regularly before the court on the defendant's motion for a new trial, the said plaintiff appearing by L. A. Dunn, ass't city attorney, and by Ace P. Abell and J. F. McGee, its attorneys, and the defendant appearing by his attorney, C. M. Hertig, and both parties being ready to proceed—the court having heard the argument of the respective parties and being fully advised in the premises, it is ordered that the motion for a new trial herein be, and the same is hereby, denied and overruled.

February 24th, 1892.

By the court:

STEPHEN MAHONEY,
Municipal Judge.

Filed Feb. 24, 1892.

H. J. ALTNOW, *Clerk,*
By O. J. SMITH, *Dep'ty.*

31 STATE OF MINNESOTA, } ss:
County of Hennepin, }

In Municipal Court, City of Minneapolis.

(Title of Cause.)

Notice of Appeal.

To Robert D. Russell, Esq., city attorney, and Ace P. Abell and J. F. McGee, attorneys for the above-named plaintiff; Moses E. Clapp, attorney general, and to H. J. Altnow, clerk of said municipal court:

Please take notice that Charles M. Bassett, the above-named defendant, appeals to the supreme court of the State of Minnesota from the judgment and sentence of conviction entered herein on the 25th day of January, 1892, and from the whole of said judgment and sentence.

Dated this 24th day of February, 1892.

C. M. HERTIG,
Attorney for Defendant.

Due and sufficient service of the within notice is admitted this 24th of February, 1892.

ROBERT D. RUSSELL,
City Attorney.
ACE P. ABELL,
J. F. McGEE,
Plaintiff's Attorneys.
H. J. ALTNOW,
Clerk Municipal Court.
MOSES E. CLAPP,
Attorney General of the State of Minnesota.

Filed Feb. 24, 1892.

H. J. ALTNOW, *Clerk,*
By O. J. SMITH, *Deputy.*

32 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Municipal Court, City of Minneapolis.

THE STATE OF MINNESOTA } 15879. Before S. Mahoney, Judge.
against
CHARLES M. BASSETT. }

January 12th, 1892, Andrew Dickey files complaint against defendant for violation of the State food law. Warrant issued and returned January 13th, 1892. Defendant, being in custody and in court, in person and by Attorneys C. M. Hertig, Esq., and J. M. Oliver, Esq., pleads not guilty, whereupon cause continued to January 20th, 1892, 2 p. m., and defendant released until said time on his

personal recognizance. January 20th, 1892, 2 p. m., cause called, whereupon Andrew Dickey was sworn for State and defendant in his own behalf. Evidence closed and cause continued to January 25th, 1892. Defendant released until said time on his personal recognizance. January 25th, 1892, 10 a. m., cause called. Cause argued by counsel. Defendant adjudged guilty, and it is ordered that defendant pay a fine of twenty-five dollars, and in default thereof be imprisoned in the workhouse of the city of Minneapolis until said fine is paid not exceeding the term of thirty days.

A stay of execution of sentence to February 6th, 1892, ordered, and defendant released until said time on his personal recognizance. February 4th, 1892, stipulation staying execution of sentence to February 18th, 1892, filed. February 18th, 1892, 9 a. m.,
33 stipulation staying execution of sentence to February 25th, 1892, 9 a. m., filed. February 24th, 1892, statement of case, stipulation, order of court settling case, notice of motion for new trial, order denying motion for new trial, and notice of appeal filed. Bond on appeal filed.

March 19, 1892, return to supreme court completed.

H. J. ALTNOW, *Clerk*,
By O. J. SMITH, *Deputy*.

34 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Municipal Court, City of Minneapolis.

I, H. J. Altnow, clerk of the above-named court, do hereby certify that I have compared the paper-writing- to which this certificate is attached with the original complaint, settled case, notice of motion for a new trial, order denying same, Record page 15879 (judgment) and notice of appeal to the supreme court, in the action therein entitled, as the same appears of record and on file in the said clerk's office, at the municipal court room, in the city of Minneapolis, in said Hennepin county, Minnesota, and find the same to be a true and correct copy thereof.

In testimony whereof I have hereunto set my hand
[SEAL] and affixed the seal of said court, at the city of Minneapolis, this 19th day of March, A. D. 1892.

H. J. ALTNOW, *Clerk*.

Endorsed: Municipal court, city of Minneapolis, Hennepin county, State of Minnesota. Certified return to the supreme court. State of Minnesota, plaintiff, *vs.* Chas. M. Bassett, defendant.

35 7601, 7602.

STATE OF MINNESOTA :

Supreme Court, April Term, A. D. 1892. Nos. 22, 23.

STATE OF MINNESOTA, Respondent,
vs.
KNUT ASLESEN, Appellant.
STATE OF MINNESOTA, Respondent,
vs.
CHARLES M. BASSETT, Appellant.
} Syllabus.

The provisions of ch. 12, Laws 1891, "regulating the manufacture and sale of lard and of lard compounds and substitutes and of foods prepared therefrom," are valid as a legitimate exercise of the police power of the State.

Judgments affirmed.

36 7601, 7602.

STATE OF MINNESOTA :

Supreme Court, April Term, A. D. 1892. Nos. 22, 23.

STATE OF MINNESOTA, Respondent,
vs.
KNUT ASLESEN, Appellant.
STATE OF MINNESOTA, Respondent,
vs.
CHARLES M. BASSETT, Appellant.
} Opinion.

Each of the defendants was convicted of a violation of the provisions of ch. 12, Laws 1891, regulating the manufacture and sale of lard and of lard compounds and substitutes and of foods prepared therefrom. Defendant Aslesen was convicted of selling a "lard substitute" called cottolene, consisting of a mixture of beef stearine and refined cotton-seed oil, without affixing to the package containing the same a label containing the words "Lard substitute," together with "the names and approximate proportions of the several constituents contained in the mixture or compound."

The defendant Bassett was convicted of selling certain articles of food prepared with this same "lard substitute," without furnishing the purchaser with a card containing the required notice of that fact.

37 Upon the trials each of the defendants offered to prove that "cottolene was a wholesome, palatable, and nutritious article of food; also that it does not resemble lard in appearance and has never been sold as lard." This evidence the trial court excluded on the ground that under the provisions of the act the facts sought to be proved were immaterial. The court's construction of the act was clearly correct. It is evident from its language that its provisions

are not confined to articles "made in the semblance of lard or as an imitation of lard" or which so resemble lard that they are liable to be sold and passed off on the public as lard, and which, for the sake of brevity, we may call "simulated articles." The act applies as well to any substance made as "a substitute for lard and which is designed to take the place of lard," and which consists of any mixture or compound of animal or vegetable oils or fats other than hog fat in the form of lard, whether such substance resembles lard in appearance or not. Neither is the act limited in its application to substances that are unwholesome. It applies alike to all "lard substitutes" consisting of the specified mixture or compound, regardless of their appearance or actual hygienic qualities. The cases, therefore, come down to the question whether the act, as thus construed, is valid as a legitimate exercise of the police power of the State.

Had the act absolutely prohibited the manufacture and sale of all such articles its validity might well be questioned. The doctrine of Butler *vs.* Chambers, 36 Minn., 71, does not go far enough to sustain such an act, for in that case we construed the "oleomargarine" act as applying to and aimed at those compounds
38 resembling butter in appearance and flavor and which for that reason were liable to deceive and mislead purchasers and consumers as to the real nature of the product; and the act was sustained upon the theory that if, in the reasonable opinion of the legislature, this fraud or imposition on the public could not be effectually prevented except by prohibiting the sale and manufacture of the "simulated articles" altogether it was competent for them to do so.

But the act now under consideration is one of regulation merely. It does not prohibit the sale of these "lard substitutes" or of articles of food prepared with them, but simply requires that the seller shall disclose to the purchaser, by label or card, the nature and ingredients of the article which he offers for sale, so that the purchaser may be fully advised as to just what he is buying. As applied to such articles of food, we are unable to see why such regulations are not valid as a legitimate exercise of the police power. We think the case is not distinguishable in principle from Stoltz *vs.* Thompson, 44 Minn., 271, in which we sustained the validity of a similar regulation with reference to the sale of baking powders containing alum. It is a matter of common knowledge that substitutes for old and well-known articles of food are becoming quite common at the present day. Being comparatively new on the market, their qualities and ingredients are not usually a matter of common knowledge. The nature of the ingredients of these compounds is usually not discernable by the appearance of the article, and the means of ascertaining what these ingredients are are not available to the mass of the people. Many of them, like cottolene, may be entirely wholesome,
39 but in this day of the common adulteration of articles of food others may be composed of deleterious ingredients, and what may be wholesome for one person may be unwholesome to another. Moreover, it is also a matter of common knowledge that, whether well founded or not, there is a popular prejudice against

certain ingredients as an article of food. This is so, for example, with cotton-seed oil. Many would not purchase or use a lard substitute of which that oil was an ingredient or any article of food prepared with it. In view of all these facts the legislature has seen fit to require the seller of these lard substitutes to label the article which he sells with what for convenience we may call a quantitative analysis of its ingredients, and to require the seller of any article of food prepared with such lard substitute to give notice of the fact to the purchaser, so that he may know just what he is buying. This certainly does not deprive the seller of his property without due process of law. No man has a constitutional right to keep secret the composition of substances which he sells to the public as articles of food. Such regulations do certainly have some real or substantial relation to the objects aimed at, to wit, as expressed in the title of the act, "to prevent fraud and to preserve the public health." They do not impair any fundamental rights of life, liberty, or property. Under such circumstances we cannot say that the legislature has exceeded the legitimate exercise of the police power of the State. If the legislation is unwise or inexpedient the only appeal is to "the ultimate tribunal of the public judgment exercised either in the pressure of public opinion or by means of the suffrage."

Judgments affirmed and causes remanded with directions to carry the sentences into execution.

MITCHELL, *J.*

40 Endorsed: Nos. 7601, 7602. State of Minnesota supreme court. State of Minnesota, respondent, *vs.* Knut Aslesen and Charles M. Bassett, appellants. Opinion and syllabus. Filed May 20th, 1892. C. P. Holcomb, clerk. April term, A. D. 1892. Mitchell, J.

41 State of Minnesota Supreme Court, General April Term, A. D. 1892.

THURSDAY MORNING, 9.30 o'clock, *April 28th, A. D.* 1892.

Court convened pursuant to adjournment, all the justices being present.

STATE OF MINNESOTA, Respondent,
vs.
CHAS. M. BASSETT, Appellant. } Cal No. 23. Reg. No., 7602.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.

A true record.

Attest: C. P. HOLCOMB, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest:

[SEAL.] C. P. HOLCOMB, *Clerk.*

42 [Endorsed:] 7602. State of Minnesota supreme court. Copy of minutes of argument. Filed June 18th, A. D. 1892. C. P. Holcomb, clerk.

43 State of Minnesota Supreme Court, April Term, A. D. 1892.

STATE OF MINNESOTA, Respondent, *vs.* CHARLES M. BASSETT, Appellant. } No. 23. Appeal from Municipal Court, City of Minneapolis, County of Hennepin.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1892, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed and cause remanded with directions to carry the sentence into execution, and that the respondent above named have judgment accordingly.

Entered June 18th, A. D. 1892.

By the court:

Attest: C. P. HOLCOMB, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest:

[SEAL.] C. P. HOLCOMB, *Clerk.*

44 [Endorsed:] No. 7602. State of Minnesota supreme court. Copy of order for judgment. Filed June 18th, A. D. 1892. C. P. Holcomb, clerk. Entered on page 94, Book "I."

45 State of Minnesota Supreme Court, April Term, A. D. 1892.

STATE OF MINNESOTA, Respondent, *vs.* CHARLES M. BASSETT, Appellant. } No. 23.

Pursuant to an order of court duly made and entered in this cause on the eighteenth day of June, A. D. 1892, it is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the municipal court of the city of Minneapolis, sitting within and for the county of Hennepin, be, and the same hereby is, in all things affirmed and cause remanded with directions to carry the sentence into execution; and it is further determined and adjudged that the respondent above named do have and recover of said Charles M. Bassett, appellant herein, the sum and amount of forty-nine & $\frac{25}{100}$ dollars ($49.25), costs and disburse-

ments in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 18th day of June, 1892.

By the court.

Attest: C. P. HOLCOMB, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25 00
Clerk's fees for making return	
Printer's fees	14 00
Clerk's fees, supreme court	10 00
Filing mandate and docketing transcript	
Affidavits and acknowledgments	25
Postage	
Copying return for printer	
	49 25

46 [Endorsed:] 7602. State of Minnesota supreme court. Transcript of judgment. Filed June 18th, A. D. 1892. C. P. Holcomb, clerk. —— ——, attorney for —— ——. Page No. 143, "D" book.

STATE OF MINNESOTA, *ss:*

Supreme Court.

I, C. P. Holcomb, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this eighteenth day of June, A. D. 1892.

[SEAL.]

C. P. HOLCOMB, *Clerk.*

47 [Endorsed:] No. 7602. State of Minnesota supreme court. State of Minnesota, respondent, against Charles M. Bassett, appellant. Judgment-roll. Filed June 18th, 1892. C. P. Holcomb, clerk. —— ——, attorney for —— ——.

48 State of Minnesota Supreme Court.

STATE OF MINNESOTA, *Office Clerk Supreme Court,* } *ss:*

I, C. P. Holcomb, clerk of said supreme court, do hereby certify and return that the annexed copy of record contains, comprises, and constitutes a true and complete transcript of the final judgment, judgment-roll, record, and proceedings had in the supreme court of